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FILED
MAY 19 1965
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 1072

MARDON R. WALKER,

Petitioner,

—v.—

THE STATE OF GEORGIA,

Respondent.

REPLY TO BRIEF IN OPPOSITION TO CERTIORARI

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The state, unable to garner evidence of misconduct by petitioner, has in its brief in opposition relied on the trial evidence of the conduct of her companion demonstrators who are not parties in this case. The impact of the state's account of the evidence is that petitioner was a member of an unruly group and by necessary implication, a participant in the disorder. This conclusion might be tenable only if there was no evidence of petitioner's good conduct. Such is not the case. From the same witnesses who described the behavior of some of Miss Walker's companions, we have statements clearly vindicating her.[1] Indeed, some

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[1] Captain Hamby on direct examination, testified:

> Q. There was nothing which you saw relating to the conduct of this defendant which would give rise to an arrest other than the fact that she was sitting there awaiting some service and did not leave upon being asked in your presence, is that correct? A. That is the only reason (R. 741-742).

Hamea Quinn, who described most of the offensive acts, testified that none of them were engaged in by Miss Walker (R. 806, 811-812).

of the events mentioned in the state's brief relate to an entirely different demonstration at another time and place (Brief in Opposition, p. 4).

Unless we are to fashion a new rule of imputed misconduct applicable to the abatement of trespass convictions, petitioner can in no way be held accountable for the behavior of the other demonstrators. Miss Walker was not charged with conspiracy or with disorderly conduct of any sort. The record is clear that she was indicted, tried and convicted for refusing to leave a restaurant after having been asked to leave by the manager (R. 5). The only conduct relevant to this charge was Miss Walker's conduct. Similarly, the only conduct relevant to the determination of the abative effect of the 1964 Civil Rights Act is Miss Walker's conduct. We submit that petitioner's case is clearly controlled by *Hamm* v. *Rock Hill*, 379 U. S. 306; *Blow* v. *North Carolina*, 379 U. S. 684; and *McKinnie* v. *Tennessee*, 33 U. S. Law Week 4319.

WHEREFORE, it is respectfully submitted that the petition for writ of certiorari should be granted.

Respectfully submitted,

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